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that business employers do – although many of the forms, deadlines and labor laws for household employers are unique.

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When families become employers, they take on many of the same responsibilities

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– if the family controls who, what, when or how the work is performed. Using Form SS-8, our company has petitioned the IRS for rulings in a wide variety of scenarios. In each case, the IRS ruled the worker was an employee.

Misclassifying a worker as an independent contractor (by using Form 1099) is considered tax evasion and the IRS has targeted several industries – household employment among them – and implemented stronger enforcement initiatives. This issue is also one of the [five questions people should ask before hiring a tax accountant](#), according to Childcare.com.

Mistake #2: Failure to properly address overtime.

Nannies and other household employees are considered non-exempt workers under the Fair Labor Standards Act. That means their employer is required to pay overtime for all hours over 40 in a 7-day work week (live-in nannies are generally an exception to this rule, although a few states require live-ins to be paid overtime as well). Overtime hours must be paid at a rate that is at least 1.5 times the regular rate of pay.

Many families try to side-step overtime by offering a “salary.” In their minds, when a job pays a salary (instead of an hourly wage) the number of hours worked is not relevant. This is true for most professionals because they are considered “exempt” workers as defined in the Fair Labor Standards Act (FLSA). But again, household workers are non-exempt so a fixed salary is illegal.

***Note:** If the worker and employer agree to a salary amount based on a schedule that regularly includes more than 40 hours, the family should protect itself by addressing overtime in an employment agreement that is signed by the employee. For example: Family and nanny agree to \$500 per week based on a 45-hour work week. The employment agreement should specify that the weekly compensation was calculated based 40 hours at*

the regular rate of \$10.52/hour plus 5 hours at the overtime rate of \$15.78/hour.

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Mistake #3: Putting a household employee on the company payroll.

The IRS has ruled that household employees are not considered “direct contributors” to the success of a business. And since businesses are entitled to tax deductions on payroll expense, it is an illegal tax deduction to include a domestic worker’s payroll expense as part of the company payroll and tax reporting.

Instead, it should be handled separately through the household employment reporting process (see Publication 926). If the expense is childcare related, the family can take the dependent care tax breaks associated with those wages – but it must be handled on the personal income tax return.

Mistake #4: Waiting until tax time to tackle the “nanny taxes.”

We see a wide variety of mistakes related to tax withholdings and state wage reporting that could be prevented if the family talked to a tax professional at the time of hire. Unfortunately, busy families often procrastinate until “tax time” and then drop a pile of paperwork on their CPA.

By then, there are frequently several small mistakes that have grown into an expensive, time-consuming mess. We strongly recommend that families and tax advisors communicate about topics like household employment early and often so that families don’t wait until next April. An ounce of prevention is definitely worth a pound of cure. Visit the [timeline](#) at Childcare.com to learn what you should do and when.

When the “nanny tax” process is handled correctly, in addition to avoiding tax and legal problems, the family will have access to tax breaks that can offset most – if not all – of the employer tax cost. And the employee is then entitled to the benefits she deserves, including Social Security, Medicare and Unemployment Insurance.

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